

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 89578-001

v

Physicians Health Plan of Mid-Michigan
Respondent

_____ /

Issued and entered
This 3rd day of July 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On May 5, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* After a preliminary review of the material submitted the Commissioner accepted the request on May 12, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the certificate of coverage (the certificate) issued by Physicians Health Plan of Mid-Michigan (PHP). The Commissioner reviews contractual issues under MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

II
FACTUAL BACKGROUND

On several dates in 2007, the Petitioner and her husband¹ received services from XXXXX and XXXXX.

¹ The Petitioner's husband had semen analyses performed on several dates but only the Petitioner's services are at issue in this case.

PHP initially covered the services but later recovered its payments and denied coverage. The Petitioner appealed but PHP maintained its denial. The Petitioner exhausted PHP's internal grievance process and received its final adverse determination letter dated April 23, 2008.

III ISSUE

Did PHP properly deny coverage for the Petitioner's fertilization services?

IV ANALYSIS

PETITIONER'S ARGUMENT

After the Petitioner received services on March 24, 2007 (identified on the explanation of benefits form as "artificial insemination; intrauterine" and "sperm washing artificial insemination") PHP initially denied the claim but eventually paid it. The Petitioner says she did not learn of the initial denial, assumed that the services were a covered benefit, and she and her husband proceeded with additional fertilization-related services on March 26, June 28, June 29, October 23, and October 24, 2007. PHP initially covered the subsequent services but in March 2008, after an audit, recalled its payments to the providers.

The Petitioner does not think it is fair for PHP to wait so long to reprocess the claims. She assumed that the services she received were covered only to find out months later that she would be responsible for approximately \$2,000.00 of charges (a "financial hardship") for which she was not able to plan. As the Petitioner said in her March 17, 2008, letter to PHP:

Any reasonable person would have been led to believe that if a claim was denied and then paid and all subsequent claims for the same procedure are paid that they have coverage. It is my understanding from the PHP Representatives that I have spoken with that PHP has had an issue with their billing system and codes for over a year now and it appears that PHP's customers are going to have to pay now for mistakes that were solely the fault of PHP.

The Petitioner says it has taken over a year for PHP to properly process her claims because of a systems failure and she does not understand how PHP can in good conscience deny her claims after that time.

The Petitioner also disputes PHP's basis for denying coverage, saying the exclusionary provision in the certificate in effect in 2007 does not specifically exclude artificial insemination.

Because of all the confusion, inaccuracy, and delay the Petitioner believes PHP should pay all the involved claims.

PHP'S ARGUMENT

PHP acknowledges that it was a computer problem that caused the Petitioner's claims to be paid in error but it says an audit in March 2008 caught the error. PHP believes it is correct in recalling its payments because, as it said in its final adverse determination, "artificial insemination services are specifically excluded from coverage" in the certificate.

The certificate that was in effect in 2007 contains this exclusion from coverage in "Section 2: What's Not Covered" (page 38):

L. Reproduction

1. Health Services and associated expenses for in vitro fertilization, gamete intrafallopian transfer (GIFT) procedures, zygote intrafallopian transfer (ZIFT) procedures or any other treatment or procedure designed to create a Pregnancy, and any related prescription medication treatment. Embryo transport. Donor ovum and semen and related costs including collection and preparation.

PHP also defends itself by citing this provision from the certificate in "Section 9: General Legal Provisions," that says: "If a clerical error or other mistake occurs, that error will not deprive you of Benefits under the Policy, nor will it create a right to Benefits." PHP argues that the Petitioner's coverage for reproductive services is limited and does not include fertilization procedures, computer errors notwithstanding.

PHP also says that the Petitioner and her husband were advised during a March 8, 2007, telephone call with PHP customer service that prior authorization had to be requested and completed before receiving services in order to determine if benefits were covered at all. PHP says the Petitioner proceeded with treatment without any authorization.

COMMISSIONER'S REVIEW

The Commissioner carefully reviewed the arguments and documents presented by the parties in this case. The issue in this case is whether PHP properly denied the Petitioner coverage for fertilization-related services.

The PHP certificate controls the resolution of this case. The certificate provides for some coverage of reproductive and family planning services but contains the following provision in "Section 1: What's Covered—Benefits:"

Not all services connected with the treatment of infertility are Covered Health Services. Refer to exclusion L. *Reproduction* in Section 2: What's Not covered—Exclusions.

While the exclusionary language ("L. Reproduction") quoted above that was in effect in 2007 does not specifically exclude "artificial insemination" as the Petitioner points out, it clearly excludes "any other treatment or procedure designed to create a Pregnancy" [emphasis added] and that would clearly mean artificial insemination. The Commissioner finds that PHP's denial of coverage was consistent with the terms and conditions of the certificate – the services the Petitioner and her husband received were not covered benefits.

It is unfortunate that PHP's computer problems caused confusion and unexpected financial liability for the Petitioner. However, nothing in the certificate or state law prevents PHP from recovering payments made in error within the time period it did in this instance.

The Petitioner also impliedly argued that she detrimentally relied on PHP's erroneous claims processing when she proceeded with further treatments. Even if true, the Commissioner

cannot decide this case on that issue because under the Patient's Right to Independent Review Act the Commissioner does not have the authority, which circuit courts possess, to order equitable relief.

**V
ORDER**

The Commissioner upholds PHP's April 23, 2008, final adverse determination in Petitioner's case. PHP properly denied Petitioner coverage for IVF and related services.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.